

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:SB:2:NEW1:GL-125415-00  
CDLansdell

date: DEC 19 2000

to: Technical Support Advisory  
Attn. Bruce Clark

from: Area Counsel (SBSE)

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subject: Effect of a Notice of Federal Tax Lien on the Estate Tax Lien  
Request for Advice

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We have received the above-referenced request made by Bruce Clark, Technical Advisor, SBSE. Mr. Clark notes that IRM 5.5.8.1.1(a) states the filing of a notice of federal tax lien, "NFTL", may impede the effect of the special estate tax lien. He has requested clarification as to how the filing of the NFTL may impede the estate tax lien.

Our analysis indicated the filing of the NFTL for the section 6321 lien does not impact negatively on the section 6324 lien. We have always been of the opinion that the general lien under section 6321 and the special lien under subsection (a) or (b) of section 6324 for the estate or gift tax are not exclusive of each other, but are cumulative. Treas. Reg § 301.6324-1. See also United States of America v. Cosmo S. Geniviva, Jr. Individually and as Executor for the Estate of Helen Geniviva, 16 F.3d 522 (3rd Cir. 1994).

However, as stated in a telephone conversation between Carroll Lansdell and Bruce Clark on November 13, 2000, since this required an interpretation of the IRM, we referred the issue to our National Office.

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We have received a reply from our National Office in which it has indicated its agreement with our analysis and stated, "There is no reason why the filing of a notice of federal tax lien would in any way impede the enforcement of the section 6324 lien. See, e.g., United States v. Rotherham, 836 F.2d 359 (7th Cir. 1988) (held IRS had priority over security interest by virtue of seizure based upon 6324(a)(2) "like lien"; NFTL had also been filed)".

You should note that SB/SE is currently working on a revision of this IRM chapter. Our National Office informs us that it appears the entire section has been revised and no longer contains the parenthetical language referred to above. However, also please note the appropriate approvals for the redrafted IRM section have not been obtained as of this date.

We trust the within helps. Should you have any questions please call the undersigned attorney at (973) 645-3076.

H. STEPHEN KESSELMAN  
Area Counsel (SBSE)

By: \_\_\_\_\_  
CARROLL D. LANSDELL  
Attorney (SBSE)

cc: Advisory Opinion GL